

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO.471 OF 2022

SOU. PRANJALI RAHUL CHANDANSHIVE)...APPLICANT

V/s.

RAHUL GAUTAM CHANDANSHIVE)...RESPONDENT

Mr.Somnath Thengil i/by Mr.Prasad P. Kulkarni, Advocate for the
Applicant.

None for the Respondent.

CORAM : ABHAY AHUJA, J.

DATE : 10th NOVEMBER, 2023

PC. :

1. On 7th October 2023, the following order was passed :

*“1. On 15th September 2023, the following order was passed :
“1. On 29th August, 2023 following order was
passed:-*

*Mr. Prasad Kulkarni, learned counsel appears for
the applicant. None appears for the respondent. It
is observed that none has been appearing for the
respondent since the institution of this
application. Mr.Kulkarni informs that the stage
before the Vita Court was for filing the written
statement until the order dated 24th March, 2023
deferring the Hindu Marriage Petition for a period
of four weeks. Learned counsel submits that
although there is no extension of the said order,
however the stage before the Vita Court remains
as it is.*

2. Mr. Kulkarni submits that the distance between Vita and Solapur is 190 km one way and rather becomes inconvenient and also causes undue hardship to the applicant to travel from Vita to Solapur and therefore the request has been made for transferring the proceedings from Vita Court to Family Court Solapur.

3. List this matter on 15th September, 2023.

4. It is made clear that if none appears for the respondent on that date, this Court will proceed to hear the applicant and pass appropriate orders.”

*2. Today again none appears for the Respondent. As and by way of last chance, list on **6th October, 2023.***

3. It is made clear that, if none appears for the Respondent on the next date, this Court will proceed to hear the applicant and pass appropriate orders.”

2. Today, again, none appears for the Respondent, despite service. This Court had recorded on the last date that if none appears for the Respondent, this Court will proceed to hear the Applicant and pass appropriate orders. This Court, accordingly, directed Mr.Somnath Thengal for the Applicant to go on with the matter.

3. Mr.Somnath Thengal has submitted that this Application is for seeking transfer of restitution proceedings filed by the Respondent-husband in the Court of Civil Judge Senior Division, Vita, District Sangli to the Family Court, Solapur.

4. Upon a query from the Court as to the stage of the proceedings before the Court at Vita, Mr.Somnath Thengal seeks some time to take instructions.

*5. Accordingly, list this matter on **10th November 2023** for the learned Counsel to take instructions and prepare in the matter.”*

2. Pursuant to the earlier order, Mr.Somnath Thengil appears under instructions from Mr.Prasad Kulkarni, learned Counsel for the Applicant and submits that the stage of the restitution proceedings before the Court at Vita is for hearing without written statement.

3. Learned Counsel submits that the Respondent though served has failed to remain present or represented despite several opportunities and this Court consider hearing the Application in view of earlier orders of this Court.

4. I have heard the learned Counsel for the Applicant. This Application seeks transfer of restitution proceedings filed by the Respondent-husband before the Court of Civil Judge, Senior Division, Vita, District Sangli to the Family Court, Solapur.

5. Mr.Somnath Thengil, learned Counsel for the Applicant, would submit that the marriage between the Applicant and the Respondent was solemnized on 24th October 2021 according to Buddhist religious rites at Solapur. Soon thereafter, the couple started cohabiting at Pune where the Respondent is working in Mahindra and Mahindra as a Team Leader and earning a salary of Rs.68,500/- per month. That, the

Applicant is 10th pass, unemployed and at home. Learned Counsel submits that after marriage, the Applicant and Applicant's in laws have not only tortured her mentally, verbally but also physically and also demanded dowry of Rs.16,00,000/- for purchasing flat, in respect of which, the Applicant has not only filed First Information Report (FIR) in Sadar Bazar Police Station, Solapur, under Section 498A, 323, 504, 506 and 34 of the Indian Penal Code (IPC) which matter is pending before the Judicial Magistrate First Class, Solapur, but also proceedings under the Protection of Women from Domestic Violence Act, 2005, which are also pending before the Court of Judicial Magistrate First Class at Solapur. Learned Counsel submits that the Respondent-husband has filed restitution of conjugal rights proceedings before the Court of Civil Judge, Senior Division, Vita on 5th April 2022, which is after the meeting between the Applicant and the Respondent and their respective family members failed. Learned Counsel would submit that the Applicant stays with her parents at Solapur. That, her father is a rickshaw driver and also a diabetic and needs continuous medical treatment, and therefore, cannot accompany her every time the matter is listed before the Court at Vita. That, her mother is also a housewife, attending to daily chores of the house. That, the distance between Solapur and Vita is more than 190 kilometers one way and considering

the financial and health condition of the father, it would not only be inconvenient but also cause undue hardship for the Applicant to travel from Solapur to Vita every time the matter is listed in the Court at Vita. Learned Counsel would submit that there are already two proceedings which are pending in Solapur, and therefore, this Court consider transferring the restitution proceedings from the Court at Vita to Solapur Court. Learned Counsel would submit that, on the other hand, the Respondent is earning handsome salary of Rs.68,500/- from his job but has not paid a single penny to the Applicant till date and can afford to travel to Solapur once the proceedings are transferred there. Learned Counsel relies upon the decision of the Hon'ble Supreme Court in the case of *N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha*¹ and urges this Court that the restitution proceedings be transferred to the Family Court, Solapur.

6. I have heard the learned Counsel for the Applicant and also considered his submissions.

7. The Respondent, though served, has chosen to remain unrepresented. As such, the allegations and submissions made in the

¹ SCC Online SC 1199 (2022)

Application also remain unchallenged. Learned Counsel has rightly relied upon the decision of the Hon'ble Supreme Court in the case of ***N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha (supra)*** where the Hon'ble Supreme Court has emphasized that in matters concerning matrimonial disputes, to meet the ends of justice, the convenience of wife has to be considered. The restitution proceedings before the Vita Court are at the stage of hearing without written statement. The distance between Solapur and Vita is 190 kilometers one way. The Applicant is not employed and fully dependent on her father, who is a rickshaw driver and also not keeping good health and as such not in a position to accompany the Applicant every time the matter is listed before the Vita Court. No doubt the circumstances do suggest inconvenience and undue hardship to the Applicant. Applying the principles settled by the Hon'ble Supreme Court to the facts of this case, which have remained unchallenged as the Respondent has neither appeared nor chosen to appoint an Advocate, despite service and opportunities, this Court is of the view that ends of justice would be met if the restitution proceedings filed by the Respondent-husband before the Court of Civil Judge, Senior Division, Vita are transferred to the Family Court, Solapur.

8. Accordingly, the Application is made absolute in terms of Prayer Clause (a) which reads thus :

“The Hindu Marriage Petition No.130 of 2022 pending before Civil Judge, Senior Division, Vita, District Sangli be transferred to Family Court, Solapur, District-Solapur.”

9. It is made clear that any observations on the merits of the dispute between the parties is only to consider this application which shall not influence the trial or disposal of the Marriage Petition which is to be tried and decided on its own merits uninfluenced by the said observations.

(ABHAY AHUJA, J.)